whole system of theorems about symbols which are to be used in a given manner; and then to make this whole system true of a desired relation we have only to show that the relation fulfils the one or two fundamental principles of the system. De Morgan treated of convertible and inconvertible relatives, repeating relatives, non-repeating relatives, transitive and intransitive relatives, and inaugurated a general system.

On three out of his four pairs of simple propositions three separate algebras of logic have been founded.

Resurrected and revivified, Logic has joined the ranks of the on-marching sciences.

ON HEGEL'S IDEA OF THE NATURE AND SANCTION OF LAW.

BY WALTER B. WINES.

There can be no doubt as to the necessity for the acceptance of the inevitable. To accomplish the possible, and to refrain from attempting the impossible, are equally wise. From this admitted truth, as a major premise, with a minor premise supplied in each particular case, a practical age has constructed a prudential syllogism whose conclusion is that to avoid vain seeking after empty knowledge and useless inquiry after that which knowledge cannot compass is not less commendable than to know all things knowable. It should not, however, be forgotten that prudence, while often the soundest worldly wisdom, may sometimes be contemptible meanness. To the palace built by philosophy, prudence sustains the relation of a cellar to a house: fundamental, useful, even necessary, yet not forming a part of its symmetry, and far beneath the apartments above, illumined by the sunlight, and through which sweeps the pure upper air.

The maxim, "Seek not to know what you cannot know," commends itself in many respects. The proposition that it is possible to know only what is capable of knowledge calls for no argument. It is not its statement, but its application, that is deleterious. The

crucial test of knowledge is too often the subjective capacity of the enunciator of the maxim. "I do not know" may sometimes be a creditable admission, but does not the very admission disprove the possibility of such a subjective negation affording any ground for the predication of knowledge, or the lack of knowledge, in others?

A statement of these preliminary considerations is not unnecessary. It is common to ridicule what is called the "windy throes of metaphysicians," and to compare their speculations to the childish attempt to grasp the prismatic hues of the rainbow. Time's echo, however, will throw back such empty laughter on the heads of those who evoke it. The tree which grows upon the mountain-top may think itself much higher than the hill on which it grows, yet it is seen for only a mile, while the mountain towers into the sky—a monument of creation, and a mound and gravestone of some dead cataclysm.

The best way to meet an argument that you cannot answer is to call the man who advances it a fool. A shrug will often accomplish more than a demonstration. This appears to be the position of many at the present time; but truth will grow and fructify for ages after the shoulders have lost the power to come to the aid of the feeble reason.

The study of law, considered in its breadth and entirety, is closely connected with that of mental philosophy. To the layman, who perhaps attempts to measure the wisdom of its provisions by his own notions of what constitutes "common sense," this proposition may appear a paradox. And even many members of the legal profession may, at first blush, question its truth. Yet it is believed to be a fact beyond successful controversion that there is a philosophy of law; in other words, that there is some underlying principle which makes so-called justice just. A law which makes all law legal is apt to escape the memories or the notice of those who receive their law through long generations of precedent, and whose thoughts never go deeper in their search for precedent than the ordinary habits and customs of the mass of mankind. This philosophy is not a philosophy of makeshifts; its principle is not a principle of expediency; its higher law is really a law, and not a selfish maxim.

What is the reason of law? What makes law possible? What

makes property a fact? What makes property allowable? These are questions which we would find answers for. If we are told that "expediency" is the answer to each, we are still confronted with the question: What is the reason of expediency? It requires some sanction, and that can be given only by thought. It is, therefore, evident that no satisfactory answer to any of these questions can be given until, after an examination of certain preliminary points, we have reached some satisfactory conclusion which may serve as a basis for a reply.

All science may, with fairness, be called an explanation. When we associate certain phenomena with their causes, we explain. The relation of an event is only half perfect unless its reason be told. In like manner all science is, in no small degree, a sort of natural history of causes and effects. But scientific explanation is always an explanation within conditions; the facts to be explained are the conditions of the explanation. But these very conditions require explanation, and, in order to answer the final questions which, spectre-like, haunt humanity — whence? and why? and whither?—we must have an explanation of explanation. But, if what has been already said be true, all explanation is conditioned, and if we would have an ultimate explanation, it is evident that it must be self-conditioned. Any final explanation which will explain the existence of conditions, and therefore existence as existence, must bring its own reason for its own self, its own necessity, that it is and that it alone is. To put the same statement in another and more concise form: All explanation is a taking possession of by mind, the ultimate explanation is a taking possession of, by mind, of *all* explanations, or, in other words, the taking possession of *all* by mind. This is nothing but self-consciousness, to understand which is to understand *all*. Hegel found the constitutive process of self-consciousness through the *notion*. That process is the idealization of a particular through a universal into a singular.

This creative effort is, at first, not readily intelligible. It is easy to see that two and two make four, but what a void lies before the mind when one turns to the question, Why *should two and two make four?* But, though at first it may be difficult to appreciate the notion, it will ultimately be seen to be the radical of thought. And it is by the march of this notion, by the continuation and

repetition of acts of self-consciousness, that the *ego* is developed into its categories, which, in their concreteness, are externalization. If this be true, not only do different differences exist between subject and object, but at the same time an absolute identity. Hence, the reduction of the object to the subject is entirely possible, since, in reality, it only reduces itself to itself. This being conceded, the transition from the *thinking* idea to the *acting* idea is not difficult. To theorize is to think about something external to ourselves. But theory, when complete, converts its object into itself; it has possessed itself of all that the object really is; it has reduced it from externality into subjectivity.

But what is will? Will is kinematic thought; and thought is potential will.

The great German metaphysicians, Hegel and Kant, sought to establish the truth of the freedom of the will. Their pride of reason was humiliated by the admission of the notion of necessity. To admit compulsion was, in their view, to admit that they were *things*, made after the image of a stone, rather than *men* made after the image of God. They could not rest under the imputation of being shuttlecocks between the battledoors of events. They were resolute in the search after better and truer means of escape than some so-called advanced thinkers of to-day, who seek a rescue from the Fate of knowledge through the Fetish of ignorance.[1]

To-day, among certain schools, free-will is laughed at. As long ago as the time of Dr. Johnson, even that great man said, "We feel that we are free, and that is all about it." And we can imagine the laugh which accompanied such a statement. Yet Dr. Johnson's argument is, perhaps, as excellent as any that can be urged in favor of free-will, since any philosophy which would command respect must guard against being repugnant to common sense. The cry of the rabble is not to be accepted as the test of true philosophy; but if, when a truth has been demonstrated and brought under the cognizance of ordinary men, they fail to appre-

[1] Huxley finds satisfaction in the thought that there are things which we cannot know, such as cause, substance, and externality; and on the strength of this (negative) belief he claims to be considered orthodox. Herbert Spencer appears to find a remarkable source of joy in feeling that he cannot find any interpretation of the mystery of subject and object, and in his inability to understand the power manifested therein.

ciate it, or find it repugnant to all their conceptions, there is strong reason for suspecting the philosophy to be in the wrong. But an idea has found lodgment in the brains of a certain class of thinkers that "freedom" means "motivelessness." The argument is, that because a man cannot act without a motive, he is a slave. But what constitutes serfdom? Is it not true that he who acts from motive intelligible to himself acts freely, while all other action is the result of necessity? Surely freedom is to obey one's self rather than to yield submission to something external to one's self. If this be so, a man's motival action is free, because his motives are his own, so that there can be no incompatibility between moral necessity and mental (or moral) freedom.

In nature, the cause repeats itself in the effect; the spark is repeated in the explosion; the motion of the arm is repeated in the motion of the stick. But in the operation of the will the motive is not repeated in the act. It is the nature of the agent that is repeated in the performance—not the nature of the motive. Our language affords an incidental corroboration of the truth of this statement. With regard to physical nature, we use the word cause; in reference to the will, we employ the term motive. But it must not be forgotten that it is only moral necessity that is freedom. A man may be the slave of his appetites, and then he is not free. It may be argued that, just as a man's higher motives are his own, so are one's desires and appetites; and, if obedience to the one be freedom, it is folly to call submission to the other slavery. To understand this subject thoroughly, however, it is important to distinguish between the two meanings of the word "*mine*." In one sense, subjectivity belongs to the inner *me;* but is not objectivity doubly mine? Have I not acquired objectivity and reduced it to possession? Does it not, then, belong to the *inmost* me? Is it not of my very essence, even that essence realized? If an affirmative answer be given to these questions, it must follow that one is truer to one's self when one is true to the *universal* "mine" than to the *particular* "mine."

But the objection may be urged, with plausibility, that the very particulars which one obeys are externalized and realized. One's desires are the outcome of nature and spirit, and what is nature but the realized idea? Such an argument, while plausible, possesses no logical weight. We are dealing with free-will, and this

can exist only when will wills itself. One feels that one's sensuous motives have a kind of externality to one's self; but to be free one must obey one's own motives; will must will itself; just as the end of reason is reason, so the object of the will is will, and therefore it is free. Hence it is that the ordinary opinions of mankind, in reference to the freedom and slavery which a man may undergo in himself, have a deep foundation in actual fact. Each man feels that he is less a man when he is dragged at the heels of his senses, and more a man when he frees himself from that democracy and submits himself to the restraint of the monarch reason. Each man stands in graceful pride in the freedom of that restraint which is imposed by universal reason; each one lies in chains who yields to the natural motives which are the sole lights, the sole guides of animals and things. Such lights are like the stars, particular and sparse, while the light of reason is like the day, universal and wide. It is true freedom, therefore, for each man to conform his will to the universal; in this way only can he become in the true sense a man; in this way only can the evolution of nature from thinghood to manhood be effected.

Now, free-will is the root of law, although (as has been already said) at the present time many so-called philosophers scout the idea of free-will. Man, they say, is ruled by his organism. This organism is a thing, just as is a cabbage, and is influenced only by externals. There is nothing but a sequence of events, and men are causes only as is the cue that propels a billiard-ball; but the force is not to be found in the cue, nor in the arm, nor in the man, nor in the food, the sun—the conditions that caused his growth. "Before Abraham was," this force existed; it has undergone more curious exigencies in its long day than Cæsar's clay. About its beginning nothing is known; it and matter are the twin Melchisedecs.

Does it ever occur to such people to consider what, then, is the meaning of law? Can it have any? If there is no free-will, what justification is there for legislative enactments? Why should there be a penalty for theft, or a right of civil action for breach of contract? Insane persons are held irresponsible for their acts and are allowed to escape punishment, because they are not free agents—in other words, because they are not under the *control* of reason. But, according to some modern thinkers, no

man so controlled (*i. e.*, no sane man) is free; why, then, should the latter, under this hypothesis, be liable to punishment if the former are to be exempt?

Men, however, will not believe such advanced thinkers, and Dr. Johnson's argument is as good as theirs. We are free; otherwise law has no meaning, and to eliminate free-will is to overturn the very foundation of the temple of justice.

But free-will is, at first, isolated self-identity; in other words, it is primarily abstract. If two components constitute a whole, either part, separated from the other and considered in itself, is abstract. Free-will, as it at first emerges, has the character of singleness or abstractness. It is like one leg of a pair of compasses. In its very singleness, however, and by its very oneness, it is constitutive of the person; it is a person. But the person's personality must be realized; for, because it is thinking will, it has in it, implicitly, the notion. The notion is the very concreteness of the universal, the particular and the singular. And as realization is always through something *other* than itself, and as free-will, as the person, is an abstract inner, and its immediate *other* must be an abstract outer, it follows that free-will can be realized only through an external thing. In this we have property. Here, then, we have the notions of person and of property, which Hegel calls the abstract self-internal and the abstract self-external.

It is beyond the scope of the present article to enter upon any discussion of the manifestation of the notional evolution into abstract right, morality, and observance; in which we again find the universal, the particular, and the singular. For the will, which is universal in law, passes into a particular phase and becomes inner, as conscience, in morality, and finds its true concreteness in observance. We must confine our attention to the philosophy of law; and, while these subjects are intimately associated with it, and their exposition would admirably illustrate the inner motions of the notion in the philosophy of abstract right, their consideration would require too much time and space to be profitable in this connection.

Legality, then, or abstract right, divides itself into property, contract, and penalty; and here again we find the singular, the particular, and the universal. For in property we find the single will, in contract we find several, or particular, wills, and in penalty we find the will of the whole, or the universal will.

First, then, of property. We have already seen that will is realized through, or by means of, an abstract self-external, a thing without will; and, while will is realized only through this thing, it in its turn finds its meaning only in will. From this statement certain things evidently follow. A man, being in his nature singular, can be possessed only of the singular. That only would be his immediate *other*. The universal can be the other only to the universal, and hence cannot be the subject of private property. Property, therefore, has its sanction, its meaning, only in nature, in the spirit of the person. From the very statement of the nature of concreteness, it follows that it is a man's duty to possess, or be a proprietor, since it is only in this way that his abstract will can be realized. A man who possesses nothing still remains abstract implicitly. But let it not be understood from this statement that it is a man's duty to be rich. The notion does not dictate as to how much or how little a man shall own; all that it dictates is its own evolution into the idea, into the objective spirit. The man who makes life subservient to a bank account is not making humanity an end to itself, but a means to a wretchedly trivial end. Such an end, if made a ruler, will misrule. The man whose object and aim is a triviality will become trivial. A life with an external motive will become an external life, and, therefore (as a sequence from what has been said), will become deformed, one-sided. It is only by cherishing noble ends that man can do nobly. It was a sentiment of Milton, no less beautiful than true, that he who would write an heroic poem must make life an heroic poem. The proverb, "Like master, like man," holds true of the end (master), and of the means (man) chosen to attain it. The meaning of the obligation is not vulgarity, but a fuller life, a more complete being, and in this sense it is every man's duty to be an owner. But will, even when set in the object, requires enunciation, which can be effected only by an act. This is seizure, which term is here used as synonymous with occupation. The judgment determines that the object seized belongs to the party seizing; in other words, his will has predicated of it, "it is *mine*." The very immediacy of the body to the mind is sufficient enunciation of property in that; and any injury done to that in which I have set my will is an injury done to my will. Seizure, then, is the bringing of a more external into relation to that less

external property, my body. Of course, the mode of seizure, or occupation, varies. I may move into a house or hold a coin in my hand. Hegel treats the whole subject of possession under three heads, and divides seizure itself into bodily seizure, formation, and designation. Here, then, is a rise in generalization from individuality to universality. Designation Hegel considers the perfection of occupancy. Not only is possession shown by bodily seizure, but by formation. Instead of taking a thing into relation to his less external property, he can place his less external property in it. He who bestows labor upon a thing enunciates his possession by formation; and, lastly, by naming, labelling, or the employment of signs, he demonstrates appropriation, or that he has set his will in it.

But even bodily seizure demonstrates proprietorship roughly—that is, that one has set one's will in the object; and even this is a kind of designation, for that is only another name for a sign, and, as a corollary from what has been already said, all the forms of occupancy are only less general instances of the ultimate import, a less general demonstration of the fact that a thing is willed mine.

Possession itself may be considered under three heads. The first of these is, as we have seen, *seizure;* the second, *use;* the third, *alienation.* These are not stereotyped in their separateness; they are known in their transitions.

The evolution of *seizure* into *use* will illustrate what has been not unhappily termed the "life-flux" of the notion. All seizure is appropriation by will. Will makes the object its own. But in this process the will must be regarded as positive, and the thing determined as negative. The will, then, being particularly determined by the thing, is particular will in a desire, and the thing negative, being particularly determined, is only for the will, and, consequently, serves it. This is the whole meaning of use. Hegel defines use thus: "Use is the realization of my desire through the abstraction, destruction, consumption of the thing; the selfishness of my nature is thus manifested, which, accordingly, thus accomplishes its destiny." According to the same authority, use is the real side of property, and is often employed as an argument by those who have wrongfully taken possession. Such persons argue, "The thing was of no use to the man from whom

I took it." Yet, as Hegel justly points out, such an argument is bad as against the actual assignment of will. If will be already in the object, use can give no title to another whose will is not in it; or, rather, whose seizure is secondary. How, then, originates prescription? From the fact that seizure may become an empty symbol, the will which made occupation or designation a force may have passed away, and the property is then really without an owner; and thus property may be acquired or lost, in lapse of time, by prescription. From the very necessity of enunciation through bodily seizure, formation, and designation, follows the necessity for continued manifestation, and it is in this way that prescription has a meaning and a right.

But, as will may in time lapse for want of enunciation, so it can be withdrawn by negation. If a thing become mine when I have willed it mine, it is evidently not mine when I have willed it not mine. In the latter act consists alienation. And when two individual wills meet, one willing alienation and the other proprietorship, we find what is technically termed in law "consent," and therefore what is designated a contract.

Thus we have arrived at the second moment of the notion of abstract right.

In this connection it may not be out of place to remark that, although much of this evolution may seem unfamiliar, much of it is sanctioned by man's ordinary experience, and the foregoing explanation of consent (although closely following Hegel) agrees with the definition in use among lawyers.[1] Philosophy collects the drift truth scattered through the world, and constructs, from the isolated fragments, a homogeneous whole.

It is in this unity of different wills that property reaches or appears in its highest manifestation; it is a unity in which difference is at the same time negated and affirmed. But the very essence of the notion is the identification of differences and the differentiation of identity. In this act we see a proprietor (whose will has met the will of another, and where "consent" has resulted) at once ceasing to be yet remaining and becoming a proprietor; and from this may be deduced the right of cancellation of the contract in case of a *laesio ultra dimidium vel enormis.*

[1] Grotius, "De Juro Belli et Pacis," lib. 2, ch. ii, s. 4; Story's "Eq. Jur.," sec. 228.

The historical progress of law, through many of its simplifications, through the extinction of many of its symbolisms founded purely in sense, and through the actual changes in the signs of possession, is an object of interest to the lawyer. The conversion of subjectivity into objectivity, which we find in passing from property to possession, requires some formalities to effect itself; for possession is the expression of will, and expression is only a particular externalization. The history to which we have referred, then, must be studied in relation to expression, and its progress in time will be found to be regulated by the advance of the possibilities of expression, or the facility for the passage of the subjective into the objective.

But it will be clear, to any one who has followed us so far, that contract is not manifested as will. The act of contract, in that it is particular, is a manifestation of wills in community, but not of will in universality. How, then, does the element of universality attach to contract? We answer, Only through its sanction or prescription by the universal will. It is not possible, in this connection, to enter into a consideration of the remedies under contract. These remedies, as every one knows, fall into one of two classes, viz.: the right of civil action, and penalty.

This leads us to the consideration of the third head under our general division, *i. e.*—Penalty.

As contract is under the sanction of the universal will, it follows that any one who intentionally negates the community of wills negates by his act the absolute will, and affirms in its stead his own particular self-will. This, in its essence, is crime.

What is the remedy? If crime be a negation of the universal will, it can be corrected only by an affirmation of the universal will in the same regard, which affirmation must be a negation of the particular will. In this consists penalty. A realized negation of the absolute will is force; hence the criminal, in such negation, has resorted to force, and the reaffirmation must be by a negation of self-will. Every one knows the effect of a double negative, and that will illustrate in some degree the process of thought. The criminal must be subsumed under his own law—force. In other words, he must be compelled to undo his own compulsion, which is evidently to restore him to his own right. But this can be efficiently done only by a disinterested representative of right.

Mere individual counter-assertion would be interminable, hence the restoration of the true inmost will of the criminal can be effected only by means of a judge, who is the representative of the universal, because (his feelings being apart from the inquiry) he can decide in conformity with the objective standards of right. And, since the relation of justice can be made actual only through the knowable existent, punishment must relate to either the person or the property of the criminal. It must not be forgotten that punishment has its foundation in the very nature of will. A more thorough comprehension of the inexorable facts of thought would do much to bring about a better understanding of the true position of the criminal in relation to society. In one sense the office of the judge is only to sanction the criminal's conviction of himself. It is the universal that he has outraged; and, as has been shown, that universal is his own in a truer and a deeper sense than are the desires and appetites which he hoped to gratify by his crime. He has given his consent to the law which punishes him. It is his inner self that tries, convicts, and condemns his outer self.

Considered in the light of these reflections, all punishment may be regarded as educational. Training is the counteracting of the passive force of nature by wise restraint and discipline. It is this that constitutes true education of the child. We have got beyond the idea that education comprises only the instruction of the child in the "three R's." We have come to see that it is elaboration—the elaboration of nature (the chaos) into character (the cosmos). True education is the subjection of nature in man, the subordination of his senses and appetites. This is possible only through the negation of the mechanical necessities of nature and a super-position of the universal, from which, as we have seen, results freedom of the will. Thus, we find that all punishment is educational; the infliction of penalty is not, as some would have us think, a wrong, but a right, which conduces to the true freedom of the individual, to the welfare of the community, and to the ultimate attainment of justice.